

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESSICA BENTON, SHELBY BRYANT,
ANNE MARIE CAVANAUGH, ALYSSA
GARRISON, AND CLARE THOMAS,
Plaintiffs

Plaintiff,

1

CITY OF SEATTLE,
Defendant.

No. 2:20-CV-01174- RAJ

MOTION TO RECONSIDER
MOTION FOR TEMPORARY
RESTRANING ORDER [Dkt 4]

NOTE FOR HEARING:

August 17, 2020

I. RELIEF SOUGHT

Plaintiffs move this Court to reconsider its MOTION FOR TEMPORARY RESTRAINING ORDER, Dkt. #4, pursuant to Local Civil Rule 7(h).

The Court denied the motion on August 10, 2020. Dkt. #25. The instant motion is filed within fourteen days of entry of that order. Local Rule CR 7(h)(2).

1 Plaintiffs ask this Court to reconsider its Order finding that Plaintiffs
2 failed to show that (1) the balance of equities tipped in their favor and (2)
3 the requested temporary restraining order was in the public interest.
4

5 “Motions for reconsideration are disfavored.” Local Rule CR 7(h)(1).
6 “The court will ordinarily deny such motion in the absence of a showing
7 of manifest error in the prior ruling or a showing of new facts or legal
8 authority which could not have been brought to its attention earlier with
9 reasonable diligence.” *Id.*
10

11 II. ASSIGNMENT OF ERROR

12 With respect to Plaintiff’s First and Fourth Amendment claims, the
13 Court found that, like in *Black Lives Matter Seattle-King County v. City of*
14 *Seattle*, No. 2:20-cv-00887 (W.D. Wash. filed July 27, 2020), the first two
15 *Winter* factors were met: plaintiffs showed a likelihood of success on the
16 merits and irreparable harm. Dkt. #25 at p. 5.
17

18 The Court found Plaintiffs did not satisfy the last two *Winter* factors
19 because they failed to establish that (1) the balance of equities tipped in
20 their favor and (2) issuing the temporary restraining order is in the public
21 interest. Dkt. #25 at p. 7.
22

1 The record does not support the Court’s finding that “Plaintiffs have
2 not shown why the July 25, 2020 protests require this Court to rebalance
3 the equities or to substitute a tailored preliminary injunction with a blanket
4 ban on crowd control weapons.” Dkt. #25 at p. 6.
5

6 Rather, the Court had a well-developed record before it but did not
7 weigh all relevant evidence when assessing the *Winter* factors, resulting
8 in manifest error. The record revealed how SPD misused its crowd control
9 weapons and how that misuse impacted Plaintiffs: rendering them unsafe
10 to continue to exercise political speech, notwithstanding the operative
11 injunction; chilling the exercise of that right such that Plaintiffs sought
12 protective gear as a condition precedent to continue engaging in political
13 speech.
14

15 Moreover, the record established that the use of force on July 25 was
16 exceptionally violent – far and apart from other protest actions.
17 Understood in the context of an operative Temporary Restraining Order,
18 then, this fact weighs against the Defendant and for Plaintiffs.
19
20
21
22
23

III. ARGUMENT

A. Considering All Relevant Evidence, The Equities Weigh in Favor of, And the Public Interest is Best Served By, Issuance of a Temporary Restraining Order Enjoining Use of CCW.

1) The Evidence Before the Court Underlines That Seattle Police Department's Conduct on July 25 was not a Misstep but a Coordinated Attack in Flagrant Disregard of this Court's Orders. Accordingly, the Public Needs an Order of Cessation, Not Clarification.

The force used by SPD on July 25 was remarkable both in its severity and the boldness with which it was wielded. Moreover, the misuse of CCW was not a matter of simply mistaken or confused officers; it was a coordinated response by SPD. One protester recounted from video 18 flashbangs in a manner of 30 seconds. *Black Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed July 27, 2020) Kyashna Decl., Dkt. #64 at ¶ 19.

Rather than utilize select crowd control weapons with restraint and only in limited circumstances, the Seattle Police Department sent a cascade of each of these contested weapons against protesters in quick succession, refuting any argument that these were necessary for dispersal, when time to disperse and comply not provided. Instead, chaos was sown.

1 A registered nurse recounted being “repeatedly doused in pepper
 2 spray.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed July 27,
 3 2020) Barrett Decl., Dkt. #54 at ¶ 24. Another protester reported: “I
 4 watched SPD use hand-held pepper spray to mace the Wall of Moms as
 5 they moved to the front of the crowd.” *Black Lives*, No. 2:20-cv-00887
 6 (W.D. Wash. filed July 27, 2020) Baker Decl., Dkt. #53 at ¶ 23.

7 More than blast balls and chemical irritants, SPD also launched
 8 projectiles indiscriminately: “There were police officers wearing gray
 9 coveralls and tactical vests, rather than the normal police uniforms. I
 10 believe those officers to be SWAT members. These officers were firing
 11 baton rounds—rubber bullets or sponge-tipped bullets—indiscriminately
 12 into the crowd.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed
 13 July 27, 2020) Matney Decl., Dkt. #74 at ¶ 10.

14 SPD was not acting in earnest on July 25, nor was it “controlling” a
 15 crowd. Instead, officers in the department ambushed residents engaged in
 16 political speech: “Then, as we were walking down a hilly street, without
 17 any warning, the police came quickly from behind us, rushed us and used
 18 flash bangs, blast balls, and pepper spray.” *Black Lives Matter*, No. 2:20-
 19 cv-00887 (W.D. Wash. filed July 27, 2020) Bruce Decl., Dkt. #56 at ¶ 7.

1 Another protester confirmed: “I also saw Seattle police absolutely
 2 drench people in pepper spray simply for not moving fast enough.” *Black*
 3 *Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed August 4, 2020)
 4 Thomas Decl., Dkt. #100 at ¶ 19.

5 These actions were confirmed by an attorney in attendance in her
 6 sworn declaration: “Even though people were complying and moving
 7 away from the SPD line, officers physically pushed and used flash bangs
 8 and chemical irritants on anyone who was not moving as quickly as the
 9 officers wanted them to move.” *Black Lives Matter*, No. 2:20-cv-00887
 10 (W.D. Wash. filed July 27, 2020) Chen Decl., Dkt. #59 at ¶ 8.

11 Another protester – a mother – agreed: “I’m still in shock from this
 12 experience. It was appalling. I have never experienced anything like it.
 13 It seemed like the police wanted to attack us. They seemed angry and
 14 fixated on hurting us; it was like they wanted to provoke a reaction from
 15 the crowd so that they could retaliate.” *Black Lives Matter*, No. 2:20-cv-
 16 00887 (W.D. Wash. filed July 27, 2020) Forest Decl., Dkt. #62 at ¶ 20.

17 What is more, the use of CCW by SPD on July 25 was exceptional
 18 relative to other protests this summer.

1 A community member present for the protests throughout the
 2 summer details the marked shift in SPD's approach at this protest on July
 3 25 – a mere 24 hours after a federal order was entered enjoining
 4 implementation of the highly-contested CCW ordinance:

5 “In May and June, I was shot with less-lethal projectiles, tear-gassed,
 6 and pepper sprayed by police. I protested outside of the East Precinct
 7 every day until police abandoned it and CHOP was created. But Saturday,
 8 July 25, 2020 was the most violent and aggressive police treatment of
 9 protesters that I have seen at any point since the killing of George Floyd.”

10 *Black Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed August 4, 2020)
 11 Thomas Decl., Dkt. #100 at ¶ 3. “There was so much smoke in the air. The
 12 clouds of smoke were three or four times thicker than I’d seen at earlier
 13 protests.” *Id.* at ¶ 14. “The rate of deployment and the volume of weapons
 14 was much greater than I’d seen at earlier protests.” *Id.* at ¶ 15.

15 Another protester, a graduate student, observed unique misuse of
 16 power by SPD that day: “But the police violence I experienced and
 17 observed on July 25, 2020, was the most I have ever seen and experienced
 18 in all the protests I have ever attended. I had never seen or experienced
 19 anything like what the SPD did that day.” *Black Lives Matter*, No. 2:20-cv-

1 00887 (W.D. Wash. filed August 4, 2020) Kramer Decl., Dkt. #103 at ¶ 4.
 2 “SPD threw grenades into densely packed areas that were already well
 3 blanketed in gas or smoke.” *Id.* at ¶ 8.
 4

5 Speaking specifically about SPD’s use of blast balls, a community
 6 member relayed: “I was terrified of the number of blast balls and explosions
 7 going off, which were more than I had seen at any other protest this
 8 summer.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed July 27,
 9 2020) Bonafilia Decl., Dkt. #55 at ¶ 8.
 10

11 A journalist confirmed the uniqueness of July 25: “In the nearly two
 12 months that I have been documenting and livestreaming these protests, I
 13 have sometimes encountered the effects of pepper spray or blast balls,
 14 directed against others. Saturday, July 25, 2020, was different. Other
 15 independent media and I were targeted by officers who used painful crowd
 16 control weapons against us.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D.
 17 Wash. filed July 27, 2020) Wieser Decl., Dkt. #73 at ¶ 14.
 18

19 The observation of the journalist was corroborated by a seasoned
 20 protester and mother: “Of all of the protests I have attended this year—and
 21 I have attended well over 30—the police violence on July 25, 2020 was the
 22

1 worst and most indiscriminate.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D.
 2 Wash. filed July 27, 2020) Kyashna Decl., Dkt. #64 at ¶ 30.
 3

4 Yet another protester agreed: “On July 25, 2020, the Seattle Police
 5 Department (“SPD”) unleashed the worst use of force I have seen since the
 6 initial demonstrations in May 2020.” *Black Lives Matter*, No. 2:20-cv-00887
 7 (W.D. Wash. filed July 27, 2020) Sill Decl., Dkt. #69 at ¶ 3.

8 After considering all relevant evidence related to bold misuse of CCW
 9 a day after the CCW ordinance was enjoined, the Plaintiffs have shown
 10 why this Court should modify its tailored preliminary injunction guiding
 11 judicious use of these weapons to enjoin their use completely.
 12

13 2) The Evidence Before the Court Demonstrates that Individuals
 14 Who Want to Exercise Political Speech Have Been and Are Being
 15 Chilled From that Exercise by The City’s Noncompliance with
 16 This Court’s Orders

17 The disruptive nature of SPD’s indiscriminate force means
 18 protesters—like plaintiffs—bear the burden of outfitting themselves to
 19 match SPD’s dispensation of crowd control weapons to be able to safely
 20 engage in political speech on the streets. This burden is real, and it
 21 endures.
 22

1 Plaintiffs in *Black Lives Matter* did not provide evidence or argument
 2 about the practical inhibition on political speech resulting from SPD's
 3 inability to restrain use of these weapons. That case did not provide
 4 evidence related to the inhibitive nature of protesting in this city because
 5 of SPD and its inability to exercise restraint.

6
 7 Here, plaintiffs did provide such evidence.

8 Plaintiff Benton explained how she borrowed chemical goggles to
 9 attend on July 25 but found this gear insufficient to protect her from
 10 exposure to the chemical agents gratuitously dispersed by SPD. Benton
 11 Decl., Dkt. #5 at ¶ 4.

12 Benton's experience is similar to an that of an attorney present at the
 13 protests, who also found goggles insufficient: "There was a lot of gas in the
 14 air, and there were flash bangs going off. I had goggles that protected my
 15 eyes, but it was impossible to avoid inhaling the gas. It made my face burn.
 16 My throat and nose stung badly, triggering coughing fits." *Black Lives*
 17 *Matter*, No. 2:20-cv-00887 (W.D. Wash. filed July 27, 2020) Chen Decl.,
 18 Dkt. #59 at ¶ 4.

19 Unlike plaintiffs in *Black Lives Matter*, Benton highlighted that she only
 20 remained at the protest for 45 minutes before having to leave "because what

1 I was wearing was insufficient when Seattle Police Department officers
 2 deployed noxious gases into the crowd.” Benton Decl., Dkt. #5 at ¶ 5.
 3

4 Later, Benton tried to obtain a gas mask to protect herself. *Id.* at ¶ 8.
 5 After searching locally for about three hours, Benton discovered local stores
 6 were sold out. *Id.* at ¶ 9. Ultimately, she ordered a gas mask online, but
 7 until it arrived she was unable to protest because of her experience on July
 8 25; but Benton would have felt able to protest without a gas mask if the
 9 Seattle Police Department were prevented from using chemical agents,
 10 projectile guns, and blast balls. *Id.* at ¶ 11.

12 Plaintiff Thomas has also not been back to a protest since attending
 13 July 25 in goggles that proved insufficient. Thomas Decl., Dkt. #7 at ¶ 4.
 14 From that experience, Thomas realized she would need to obtain a mask,
 15 respirator, and knee pads before returning to protest. *Id.* at ¶ 7. She must
 16 forego political speech on timely political issues until she obtains them.
 17

18 Plaintiff Bryant also missed opportunities to engage in political
 19 speech while waiting for protective gear to arrive. Although Bryant wore
 20 goggles and an ATV helmet on July 25, she could not return until she
 21 obtained a gas mask, respiratory, and knee pads. Bryant Decl., Dkt. #8 at
 22 ¶ 5-15.
 23

1 Bryant missed six protest events because she did not have gear that
 2 would protect her from SPD's actions – when a court order did not – on
 3 July 25. *Id.* at ¶ 17.
 4

5 Similarly, Plaintiff Garrison had to forego protesting to protect
 6 herself after SPD's misuse of CCW on July 25. Garrison Decl., Dkt. #9 at
 7 ¶ 12. She quickly determined the helmet, chemistry goggles, and umbrella
 8 she brought for protection were insufficient after witnessing a protester
 9 receive a chemical stream directly in the face. *Id.* at ¶ 13. Garrison spent
 10 \$209 on a respirator to be able to attend protests safely again in Seattle.
 11 *Id.* at ¶ 15. While awaiting arrival of this necessary protective gear,
 12 Garrison missed two protests she would have attended if she had proper
 13 protective gear, or if SPD did not have access to these CCW. *Id.* at ¶¶ 17,
 14 18.

17 Meanwhile, Plaintiff Cavanaugh is still unable to go protest and
 18 exercise political speech—as a 54 year old woman and seasoned activist,
 19 Cavanaugh decided she could not return to protest until obtaining
 20 protective eye gear after her experiences with SPD on July 25. Cavanaugh
 21 Decl., Dkt. #6 at ¶ 4. She struggles with figuring out the right combination
 22
 23

1 of protective gear to obtain to remain safe. *Id.* at ¶ 9. Protesting has
2 become “a pre-planned, extremely involved event.” *Id.* at ¶ 10.
3

4 The actions of SPD have not provided Plaintiffs with reassurance that
5 they will abide by the Court’s order related to restraint in use of these
6 crowd control weapons. Plaintiff Cavanaugh awaits the ability to assemble
7 and protest alongside her community without the need to obtain tactical
8 gear to remain safe. A TRO enjoining possession of these weapons would
9 provide Cavanaugh – and many protesters like her – the assurance that
10 they can protest safely.
11

12 Absent from presentation by plaintiffs in *Black Lives Matter*, but
13 present for this Court’s consideration, is a chart of sources indicating the
14 range of costs for tactile equipment to be safe from misused crowd control
15 weapons. *See* Dkt. #1, Attachment 1 at p. 2. That resource demonstrates
16 that equipment can range from \$300 for a “budget” outfitting, \$650 for
17 mid-tier gear; and \$2,150 for top-tier gear.
18

19 Protesters are not free to exercise their 1st Amendment rights and
20 engage in political speech without this cost-prohibitive gear and the
21 burden of awaiting its arrival in the postal mail because of SPD’s continued
22 inability to exercise restraint and abide by court orders.
23

Protesters, like plaintiffs, are cobbling together resources to be able to continue to speak for justice in the streets of Seattle, by way of a crowdsourced fundraise for protective gear. Ramon Decl., Dkt. #20 at ¶¶ 2-7. Over \$10,000 was generated by folks in the community – during a cataclysmic recession and a pandemic marked by record unemployment – to support the continued ability of individuals to protest for racial justice and timely respond to myriad political issues in the City. *Id.* That money was utilized to purchase protective gear, including gas masks for the OC spray, tactical helmets for the high velocity projectiles, and medical supplies to respond to blast balls utilized against crowds, often landing unpredictably. *Id.* at ¶ 8.

3) The Evidence Before the Court Demonstrates that a TRO is in the Public Interest.

Plaintiffs in *Black Lives Matter* initially sought a complete prohibition of any chemical irritant such as CS gas (“tear gas”) or OC spray (“pepper spray”) and any projectile such as flash-bang grenades, “pepper balls,” “blast balls,” and rubber bullets. See *Black Lives*, No. 2:20-cv-00887 (W.D. Wash. filed June 9, 2020) Dkt. #6, Attachment 1 at 2. Rather than enjoin use of the weapons, this Court entered a preliminary injunction limiting

1 use of tear gas against protesters – only if other efforts are “exhaustive
2 and ineffective” and the Chief of Police determines use of tear gas is the
3 “only reasonable alternative available.” *Black Lives Matter*, No. 2:20-cv-
4 00887 (W.D. Wash. filed June 12, 2020) Order Granting Motion for
5 Temporary Restraining Order, Dkt. #34 at p. 10-12.

7 That injunction was in place on July 25. It was read to the officers
8 before every shift. The language was clear; the limitations unmistakable.
9 But notwithstanding the clarity of that injunction and its repetition,
10 Seattle Police Department violated its plain terms with an assaultive front
11 against protesters.

13 Subsequent to this remarkable show of force, *Black Lives Matter*
14 proposed and entered into a stipulated “clarification” of the preliminary
15 injunction, specific protections for journalists, medics, and legal observers
16 and underscoring the obligation to issue warning before using chemical
17 irritants or projectiles. See *Black Lives Matter*, No. 2:20-cv-00887 (W.D.
18 Wash. filed August 1, 2020) Order Granting Stipulated Clarification of
19 Preliminary Injunction, Dkt. #110.

1 But this contemptuous behavior – and its flagrant nature –
 2 underscore that the public needs more than a clarification; it needs this
 3 Court to enjoin use of these weapons to ensure public safety.
 4

5 But as evidenced by the record, the use of force on July 25 by Seattle
 6 Police Department—a day after the contentiously-legislated CCW
 7 ordinance (Ordinance 119806) was halted by a federal order—was not a
 8 simple failure to issue a warning, or inadvertent use of weapons against
 9 non-protesters: “There were so many flash bangs and other explosions
 10 that I lost count—they were just throwing them indiscriminately.” *Black*
 11 *Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed July 27, 2020) Kyashna
 12 Decl., Dkt. #64 at ¶ 15. Another protestor recounted: “For the next several
 13 hours, SPD deployed projectiles and chemical irritants directly at whoever
 14 was nearby, including the group of live streamers and corporate media off
 15 to the right of the front-facing line, and legal observers who were
 16 stationed on the left side and throughout the crowd.” *Black Lives Matter*,
 17 No. 2:20-cv-00887-RAJ (W.D. Wash. filed August 4, 2020) Vignau Decl.,
 18 Dkt. #101 at ¶ 14.

22 Because the problem is not merely clarity of an order but rather
 23 wholesale abandonment of it, further clarity and modification of this

1 Court's injunction which still allows for SPD to utilize these munitions fails
 2 to protect the community and Plaintiffs, from the chilling effect of
 3 continued misuse of CCW on the streets.
 4

5 The question is not whether the injunction did or does "provide
 6 protestors with several safeguards." Order Denying Motion for Temporary
 7 Restraining Order, Dkt. #25 at p. 6. It is whether SPD will abide by
 8 guidance and exercise restraint with these weapons. But the answer is
 9 already written: they refuse to, even when under a federal microscope.
 10

11 The Court found plaintiffs here have *more* protections than plaintiffs
 12 who initiated the *Black Lives Matter* suit in June, and accordingly, "the need
 13 for separate and additional injunctive relief is greatly diminished" because
 14 "an injunction is already in place." Order Denying Motion for Temporary
 15 Restraining Order, Dkt. #25 at p. 6-7.
 16

17 But what comfort does an injunction provide a person gassed on the
 18 street in direct violation of this Court's operative order on July 25? What
 19 confidence does a protester have exercising their 1st Amendment rights
 20 that such deviation from a clear judicial order will not occur again?
 21

22 This was not a misinterpretation. It was an offensive against the
 23 people sustaining the fight against racial injustice and for defunding of

1 police in the streets of Seattle. Emboldened as the “Ignored Majority”
 2 finally taking back what the city council tried to—and did—legislate away.
 3
 4 *See Reply to Defendant’s Response, Dkt. #23 at p. 5.*

5 Community members have detailed at length to this Court how it is
 6 that these weapons impact them as a group, when wielded to attack and
 7 not “control”: “At that point, the front line of police began pepper spraying
 8 people caught at the rear of the crowd. The spray drifted south with the
 9 wind to where I was, and I felt it begin to sting my eyes and irritate my
 10 lungs—even though I was twenty to thirty feet removed from the
 11 individuals being targeted.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D.
 12 Wash. filed July 27, 2020) Oberstadt Decl., Dkt. #67 at ¶ 6; “I was struck
 13 by how difficult it was to achieve a “safe” distance out of the range of the
 14 flash bang. There were times that we were standing at least 100 feet back
 15 from the front line of protesters and we were still in range of being hit. Not
 16 only are police launching or throwing flash bangs far and wide, the flash
 17 bangs are also incredibly unpredictable.” *Black Lives Matter*, No. 2:20-cv-
 18 00887 (W.D. Wash. filed August 4, 2020) Sterner Decl., Dkt. #97 at ¶ 18.

22 4) New Facts Further Underscore Need for an Order Enjoining
 23 Possession and Use of CCW at Protests.

1 The Seattle Police Department remains undeterred in its pattern of
2 assaultive behavior towards protesters speaking against police brutality.
3 This is true despite long-standing federal oversight, a recent injunction
4 guiding use of the weapons, and on the heels of a civil rights lawsuit for
5 excessive use of force initiated in June.

6 For example, Seattle Police Department officers on August 14, 2020,
7 attacked protesters participating in the “car brigade” – an adaption of
8 protesters to protect themselves after being targeted by vehicles while
9 protesting. An SPD officer smashes a window with a driver inside; the tires
10 of the vehicle are slashed. The video is available at
11 <https://drive.google.com/file/d/1qlp3aVik6B8JuElZfN8YxFYhpSzbeL0S/view>.

12 Two days prior, the Seattle Police Department assaulted protesters
13 with a vehicle. That incident is captured on video, and the officer involved
14 speaks to a protester afterwards:
15 <https://drive.google.com/file/d/1UHF7xpkAI251Oo2Fb0M1-mhYLv81MkJ1/view>.

16 These most recent bombastic explosions of power have spurred a call
17 from activists and protesters alike to City Council members to denounce this
18

1 and other recent misconduct by Seattle Police Department. *See, e.g.*
2 “Unacceptable Escalation of Violence by The Seattle Police Department –
3 Evening of August 12” template “write-in” letter, available at
4
<https://docs.google.com/document/d/1jfNvnMCAtsNC7PHQow-BIWKaFW7tutKPGYO33zqmRmk/edit>.
5
6

7 While undersigned was preparing this briefing, yet another instance
8 of SPD’s antagonism came to light. A video from a police response to a call
9 at Cal Anderson park, formerly where CHOP existed, shows a member of the
10 community using a cane and calling a Seattle Police Department officer a
11 “fucking bitch.” (While such language may be scathing in a legal brief, it is
12 par for the course in the protests calling for SPD’s defunding, and, in fact,
13 much more inflammatory language is used.).
14
15

16 What does the Seattle Police Department officer do in response?
17 She pushes the man with a cane, squares up to fight him, and then he is
18 ultimately tackled. Four screenshots of that video are included below at
19 Figures 1, 2, 3 and 4. The video is available at:
20
21

<https://twitter.com/spekulation/status/1295169946314391552>.
22
23

Figure 1



Figure 2



Figure 3



MOTION TO RECONSIDER MOTION FOR
TEMPORARY RESTRAINING ORDER | 21

SMITH LAW, LLC
4301 NE 4th St. PO Box 2767
Renton, WA 98059
Phone: (206) 715-4248
Fax: (250) 900-2664

Figure 4



On August 6, 2020, Judge Robart found good cause to extend the TRO enjoining implementation of the CCW until September 18, 2020, “so that the court can preserve the status quo and provide the relevant stakeholders with sufficient time to comment on the CCW.” *United States v. City of Seattle*, No. 2:12-cv-01282 (W.D. Wash. Filed August 6, 2020) Order on Joint Status Report, Dkt. #634 at p. 2.

The reports commenting on the CCW ordinance were submitted on August 14 and they underscore a material difference in how SPD responds to protesters engaging in police-related protests compared to other topical protests.

The Community Police Commission (CPC), one of the stakeholders, noted as a threshold matter in its report: "we chose to use the term 'Crowd Control,' to model the language used within the Ordinance. However, we

1 feel it is important to highlight the actions that lead to the creation of the
 2 Ordinance were more akin to protest suppression." SEATTLE COMMUNITY
 3 POLICE COMMISSION, CPC RECOMMENDATIONS ON SEATTLE'S CROWD CONTROL
 4 WEAPONS BAN 2 (2020), available at
 5 <https://seattlecpc.files.wordpress.com/2020/08/cpc-recommendations-on-crowd-control-weapons-ban.pdf>.

6
 7 The report itself underscores the eristic nature of this term when the
 8 unruly crowd to "control" is not street protesters but instead an entire
 9 Department: of taxpayer funded, weapon-wielding police.

10
 11 The CPC report noted that just over 25% of protests have a police
 12 monitoring presence. SEATTLE COMMUNITY POLICE COMMISSION, CPC
 13 RECOMMENDATIONS ON SEATTLE'S CROWD CONTROL WEAPONS BAN 10
 14 (2020) ("Seattle boats an average of 300+ demonstrations each year, with
 15 approximately 80 of those mentioned being monitored by police."). It
 16 highlighted that "SPD's presence during protests was perceived by
 17 community as an intimidation tactic with a looming sense of threatening
 18 force, which was actualized." SEATTLE COMMUNITY POLICE COMMISSION, CPC
 19 RECOMMENDATIONS ON SEATTLE'S CROWD CONTROL WEAPONS BAN 10 (2020).

20
 21 The CPC noted that in recent months, SPD "has attended a majority of
 22 MOTION TO RECONSIDER MOTION FOR
 23 TEMPORARY RESTRAINING ORDER | 23

SMITH LAW, LLC
 4301 NE 4th St. PO Box 2767
 Renton, WA 98059
 Phone: (206) 715-4248
 Fax: (250) 900-2664

1 demonstrations that are specifically rallying against police violence and
 2 brutality." SEATTLE COMMUNITY POLICE COMMISSION, CPC RECOMMENDATIONS ON
 3 SEATTLE'S CROWD CONTROL WEAPONS BAN 10 (2020).

4 The CPC further identified the disparity between SPD's "crowd
 5 management" tactics at protests for racial justice or against police brutality
 6 as opposed to large crowds of sports fans: "Nor have we seen the same level
 7 of response after Seahawk or Sounder championship parades." SEATTLE
 8 COMMUNITY POLICE COMMISSION, CPC RECOMMENDATIONS ON SEATTLE'S CROWD
 9 CONTROL WEAPONS BAN 2 (2020).

10 The Office of Police Accountability, another stakeholder, indicated the
 11 distinction between the current protests topically as it relates to policing and
 12 community: "The recent protests in Seattle have been about police
 13 misconduct—not, for example, women's rights or the environment—which
 14 has posed a unique challenge for SPD. During protests, the police are
 15 generally responsible for protecting the public, preserving property, and
 16 mitigating traffic impacts. But "when the protests are police-focused, they
 17 must also avoid escalating existing tensions with demonstrators
 18 unnecessarily." *U.S. v. Seattle*, No. 2:12-cv-01282 (W.D. Wash. filed August
 19
 20
 21
 22
 23

15, 2020) Office of Police Accountability Report, Dkt. #636 at p. 11.

MOTION TO RECONSIDER MOTION FOR
 TEMPORARY RESTRAINING ORDER | 24

SMITH LAW, LLC
 4301 NE 4th St. PO Box 2767
 Renton, WA 98059
 Phone: (206) 715-4248
 Fax: (250) 900-2664

1 The Office of the Inspector General, the final of the oversight triad,
2 acknowledge the phenomenon insofar as it recommended a disparity
3 analysis of SPD response to current and past demonstrations. *U.S. v. Seattle*,
4 No. 2:12-cv-01282 (W.D. Wash. filed August 15, 2020) Office of Inspector
5 General Report, Dkt. #637 at p. 35.

7 **IV. CONCLUSION**

8
9 The Seattle Police Department has a pattern of indiscriminate and
10 reckless use of CCW weapons. The misuse of CCW generated this Court's
11 initial TRO in June. That governing order was in place on July 25. The
12 evidence before this Court from July 25 is simply incompatible with an
13 earnest attempt by the Department to conduct themselves in accordance
14 with this Court's June TRO.
15

16 The TRO which permitted use of CCW did not protect the community
17 and protesters engaged in political speech.
18

19 On balance, and considering the evidence, a "stipulated clarification"
20 of this Court's order is insufficient to reign in SPD's misconduct and to
21 protect residents of the community – both their safety, and their exercise
22 of constitutional rights.
23

1 Accordingly, this Court should reconsider Plaintiff's Motion for a
2 Temporary Restraining Order and grant relief as sought here, and as
3 initially requested by plaintiffs in *Black Lives Matter*.
4

5 The law is ill-equipped to handle the discrete violations occurring
6 daily at the hands of SPD and to address those harms. A TRO should
7 provide the injunctive relief necessary to assure robust First Amendment
8 protections and to prevent the decidedly irreparable harm that falls on
9 protesters seeking to continue to engage in political speech and assembly
10 with their community on the streets but unable to do so.
11

12
13 J. Talitha Hazelton
14 WSBA NO. | 52460
15 *Counsel for Plaintiffs*
16
17
18
19
20
21
22
23